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July 20, 2011

**ATTORNEY WORK PRODUCT – PRIVILEGED AND CONFIDENTIAL**

Metropolitan Transportation Commission  
Oakland, California

Bay Area Toll Authority  
Oakland, California

Re: Building Acquisition by Joint Powers Authority

Ladies and Gentlemen:

You have advised us that the Bay Area Toll Authority ("BATA") and the Metropolitan Transportation Commission ("MTC") propose to enter into a joint exercise of powers agreement (the "Agreement") pursuant to the Joint Exercise of Powers Act (California Government Code sections 6500 et seq.) pursuant to which a joint powers authority (the "Authority") would be authorized to plan, acquire, and develop office space and facilities and exercise certain of the additional powers conferred by the Joint Exercise of Powers Act. You also advised us that the Agreement will provide that the Authority may exercise its powers in the same manner as BATA exercises its powers. You have further advised us that the office space and facilities would be sufficient for the present needs of BATA and MTC and allow for expected future growth of BATA and MTC (with public and perhaps private entities expected to occupy space not needed at any given time by BATA and MTC). You also advised us that the Agreement will provide that BATA may contribute funds to the Authority from time to time as contributions to the Authority to fund the Authority's planning, acquisition, and development of office space and facilities; that any funds held by the Authority that are determined by the Authority to be in excess of the Authority's then current capital and operating needs would be paid to BATA; and that after termination of the Agreement any money and other assets in possession of the Authority would be paid to BATA.

You asked whether the BATA contributions to the Authority and payments by the Authority to BATA in accordance with the Agreement are permitted under applicable law.

BATA is responsible under California Streets and Highways Code section 30950 *et seq.* for the administration of all toll revenues from state-owned toll bridges within the geographic jurisdiction of MTC and for other activities that require office space and facilities for its commission and staff, now and in the future. BATA is authorized by California Streets and Highways Code section 30951(c) to do all acts necessary or convenient for the exercise of its powers, which may be



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construed to include the acquisition of such office space and facilities. BATA is further authorized by Streets and Highways Code section 30951 to acquire, construct, manage, maintain, lease, or operate any public facility or improvements.

MTC is responsible under the Metropolitan Transportation Commission Act (California Government Code section 66500 et seq.) for providing comprehensive regional transportation planning and for other activities that require office space and facilities for its commission and staff, now and in the future, and MTC is authorized by California Government Code section 66506 to do any and all things necessary to carry out the purposes of the Metropolitan Transportation Commission Act, which may be construed to include the acquisition of such office space and facilities.

Under California Government Code section 6502, two or more public agencies, by forming a joint powers authority, may jointly exercise any power common to such agencies. The Joint Exercise of Powers Act separately confers additional powers on joint powers authorities that are separate public entities such as the Authority. See, for example, Government Code sections 6508 and 6588. The Agreement is proposed to provide that the Authority will have the powers common to MTC and BATA and the powers separately conferred by law upon the Authority, and will be authorized to do all acts necessary for the exercise of such powers, including, but not limited to, any or all of the following: to enter into contracts, including contracts providing for public or private sector entities to plan, acquire and develop the Authority's office space and facilities; to employ agents and employees; to acquire, construct, provide for maintenance and operation of, or maintain and operate, any buildings, works or improvements; to acquire, hold or dispose of property wherever located, including the lease or rental of property; to incur debts, liabilities or obligations (except as provided in the Agreement); to receive gifts, contributions and donations of property, funds, services and other forms of assistance from persons, firms, corporations and any governmental entity; to sue and be sued in its own name; and generally to do any and all things necessary or convenient to the Authority's purpose, namely to plan, acquire, and develop office space and facilities and undertake related activities.

California Government Code section 6504 provides in pertinent part that the parties to a joint exercise of powers agreement may provide that (a) contributions from their treasuries may be made for the purpose set forth in the joint exercise of powers agreement, (b) payments of public funds may be made to defray the cost of such purpose, and (c) advances of public funds may be made for the purpose set forth in the joint exercise of powers agreement and repaid as provided in the joint exercise of powers agreement. California law does not require MTC to make contributions to the Authority, nor will the Agreement provide for MTC to do so.



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California Government Code Section 6512.1 provides in relevant part that a joint exercise of powers agreement may provide (a) for the repayment or return to the parties of all or any part of any contributions, payments or advances made by the parties pursuant to section 6504 and (b) for payment to the parties of any sum or sums derived from the revenues of facilities acquired or operated by the joint powers authority.

Based upon our examination solely of the proposed Agreement and the statutory provisions cited herein, as well as the further qualification that there is no case directly on point, we are of the opinion that if the matter were properly briefed and presented to a court with applicable jurisdiction, the court would hold that:

1. The proposed BATA contributions to the Authority in accordance with the Agreement are permitted by California law.
2. The proposed Authority payments to BATA in accordance with the Agreement are permitted by California law.

This letter is furnished by us as counsel to MTC and BATA and speaks as of its date. We disclaim any obligation to update this letter. This letter is not to be used, circulated, quoted or otherwise referred to or relied upon for any other purpose or by any other person without our permission. This letter is not intended to, and may not, be relied upon by any party to whom it is not specifically addressed.

Very truly yours,

  
ORRICK, HERRINGTON & SUTCLIFFE LLP